

ЦИВІЛЬНЕ ПРАВО І ПРОЦЕС; СІМЕЙНЕ ПРАВО

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SCIENTIFIC AND LEGAL ASPECT OF THE PRINCIPLES OF CIVIL PROCEDURAL LAW

In the current development of society, there is a need to study and review the improvement of some significant volume of views on legal and scientific categories. This issue is very relevant in the context of building a democratic, legal and social Ukraine, which, in turn, requires a thorough theoretical calculations and analysis of legal science in Ukraine and its further development on a better basis of methodology.

The article is devoted to the study of the principles of civil procedural law and the diversity of approaches to their classification. The study also covers the diversity of positions on the understanding and qualification of the principles of civil procedural law. In addition, the article examines the basic principles of civil procedural law and their impact on the administration of justice in Ukraine. In particular, the authors note that the improvement of the system of principles of civil procedural law in today's conditions is the foundation for building an effective model of a democratic and legal state. This issue is especially relevant in the current conditions of instability in the country in connection with the global pandemic COVID-19 and in connection with other problematic issues, which may result in violations of human rights and freedoms, including citizens of Ukraine. The necessity of optimization, qualitative and effective reforming of the principles of civil procedural law, justice and justice in the conditions of modern problematic questions which have arisen before the state and a society is considered.

The procedure for forming the principles of civil procedural law, which is quite understandable, is based on the general principles of the legal system of the state. But the problematic issue of the principles of procedural law is still relevant and controversial. Such a problematic issue as the principles of civil procedural law has been discussed for 10 years. Given the urgency of the problem, it is not surprising that the question of the principles of civil procedural law is still of constant interest to scholars-practitioners who have been or are engaged in their study. This question and some other questions determine the subject of the article.

Key words: *principles of civil procedural law, civil proceedings, tendencies of development of principles of civil procedural law.*

Formulation of the problem. The question of the principles of law has always accumulated a high scientific interest of legal scholars. The first studies, which were devoted to the principles of law, were conducted in the 40's of the twentieth century. The results of these studies are relevant today. The process of reforming Ukraine and its formation as an independent state, entering the international arena requires the improvement of provisions in national legislation to the level of international legal standards.

Improving the system of principles of civil procedural law is the foundation for building an effective model of a democratic and legal state in Ukraine. This issue is especially relevant in today's conditions, in conditions of instability in the country with the assistance of the global pandemic COVID-19 and in connection with other problematic issues, which, unfortunately, results in violations of human rights and freedoms, including citizens of Ukraine.

A special influence on the normative content of the principles of civil procedural law is observed during the rule-making activity of the state and society. The principles of civil procedural law are characterized by a special property, in particular, the ability to promote a clear and unambiguous, correct interpretation of civil procedural law and the effective functioning of civil justice.

Today, the system of principles of civil procedural law needs some improvements, which can be described as systemic reform. The purpose of this reform is to strengthen the system of ensuring human rights and freedoms, especially socio-economic rights, in particular, civil rights, freedoms and interests.

In this context, the position of A.P. Zaits seems appropriate, emphasizing that the essential and central in the understanding of the rule of law are the principles of the state's rights and freedoms of man and citizen, based on the fact that the rule of law is a state in which there is a regime of connection of power with the rights and freedoms of man and citizen, which is obliged to legally protect and guarantee the rights and freedoms of people, in particular its citizens. The connection of the state with rights and freedoms means nothing more than the restriction of the state by these rights and freedoms and legal determinism [3, p. 14].

As a rule, reforms give the most effective results in terms of their implementation in legal states, with a democratic society, because modern mechanisms for the protection of fundamental human and civil rights and freedoms are developed. The

most effective and widespread defense mechanism is judicial protection.

Civil procedural law of Ukraine as a branch of law occupies a leading place in the system of national law, the purpose of which is to ensure the implementation of the mechanism for the protection of civil rights. Reforming the principles of civil procedural law, in modern conditions, is associated with further improvement of the functions of civil justice.

Analysis of recent research and publications. In the legal literature, the issues of the principles of civil procedural law, justice and judicial proceedings have been studied in the works of such Ukrainian lawyers-scientists as: S.N. Abramova, S.S. Alekseev, A.S. Dovgert, A.I. Drishlyuk, A.P. Zayets, I.M. Ilyinska, P.M. Rabinovych, A.M. Kolodiy, V.V. Komarov, Y.D. Prityka, Y.O. Kharitonov, and others.

Forming the goals of the article. The purpose of the article is to study scientific views and approaches to the principles of civil procedural law, justice, their qualifications and system in the context of the legal system of Ukraine. Inventing ways to improve the system of principles of civil procedure law and eliminate identified shortcomings

Presenting main material. The question of the principles of law (principles of international law, certain branches of law, in particular the principles of civil procedural law) is currently given considerable attention, but in science there are still different views on their interpretation. The term "principle" (Latin – principium) is what underlies a certain theory, doctrine, science, worldview, etc. [4].

As a rule, the principles of law are a certain basis, a set of guiding ideas, provisions that determine the nature, content and purpose of legal regulation of relations in society.

The principles of law are the basis for the origin, formation, functioning and development of law in general and individual legal systems, in particular in the state of Ukraine. Principles are important provisions on which the law is based in all its manifestations (law-making, law enforcement and law enforcement) [5, p. 252].

The scientific literature is characterized by the lack of common theoretical views on the issue of reforming the principles of civil procedure law, and therefore there are different views on the role and place of principles within their system. The issues of shortcomings in the implementation of the requirements of the system of principles

at different stages of the civil process remain unresolved.

Investigating the principles of civil procedural law, scholar-lawyer S.P. Pogrebnyak emphasizes such features as:

- concentrated reflection of the result of the development of law and determination of the directions of its further development; the most general character;
- self-sufficient character (from the point of view of formal certainty);
- embodiment of the most important values inherent in a certain system of law;
- increased stability [6].

The principles of civil procedural law are objective, they are determined by the circumstances that exist in society. This pattern causes the variability of some basic provisions of civil procedural law over time, but does not mean instability or unreliability of these provisions, in particular due to the development of the scientific and technical process of ensuring the principle of publicity, openness of civil proceedings or access to justice can change its form, such as filing a claim in electronic form, holding a court hearing in the form of videoconferencing, broadcasting court hearings on the Internet, etc.

Based on the above, we can conclude that the form of expression of some principles of civil proceedings may change over time, but their content or nature is unacceptable to change. It is also inadmissible to deviate from the principles on which the law in general is based. The rule of law, legality, dispositiveness and adversarial nature, which determine the content of civil procedural law are indispensable elements for the existence of this branch of law and protection of human, civil and civil rights, freedoms and interests, and the influence of time in our opinion, cannot be changed.

The principles of civil procedural law can be considered from two points of view. First, as historical categories developed over the long development of the process itself, as an element of human culture. Secondly, as concepts or ideas that are enshrined in the rules of civil procedural law and have a normative nature. Based on the above, we can conclude that the principles of civil justice are the defining ideas, principles according to which the regulation of relations arising in the field of justice, and which express the tasks of justice in civil cases, characterize the methods of their implementation [10].

However, there are other views on the legal nature of the principles of law, the essence of which

is that the principles of civil procedural law are defined as a generalized rule of law and are more stable than ordinary rules of law. S.S. Alekseev interprets the principles of law as expressed in the law of the original legal principles that characterize its content, the foundations enshrined in the foundations of public life [8]. O.S. Komarov by the principles of law means the basic ideas, organizational characteristics of lawmaking [9].

G.A. Sverdlyk notes that all the principles “are closely related and the exclusion of one of them leads to the dysfunction of the entire legal system as a whole” (this is correct), that all the principles in one way or another reflect the existing social relations (rather wrong than right), the author immediately argues that “the subjective beginning is the ability to choose the principles that will form the basis of certain legal institutions and norms” (completely wrong) [7].

A wide range of legal scholars pay attention to the study of the issue of understanding the concept of the principles of civil procedural law, which is due to the complex nature of the issues raised. The correct solution of this problem is possible after taking into account the relationship of this branch of law with other common law processes and their development, which takes place in society and the state.

Based on national and foreign experience, it can be argued that the system of civil rights of man and citizen is the basis of effective democratic and socio-economic development of law, state and society.

The principles of civil procedural law, as well as the principles of other branches of law, find their legal manifestation in cases of their normative enshrinement in Ukrainian law. A very important fact is that the normative-legal aspect of the principles of civil procedural law shows that in the objective sense, the principles are general rules of law, observance and implementation of which is mandatory, the principles are provided by the state. However, to identify the rules of law and principles of law is unacceptable and incorrect in terms of their social and legal significance.

The task of the rule of law is to reveal the objective conditions of public life, in other words, the rules are a form of expression of the essence of law. The principles, in turn, are intended to reflect the state will of the people, their views on the administration of justice, the expression of the content and essence of civil procedural law of Ukraine and the establishment of democracy in civil proceedings.

Based on the legal nature of the principles of law, in particular civil procedural law, they must meet such characteristics as: generality and effectiveness, democracy, systemicity, source of origin, ideological orientation, regulation, and so on.

The principles of civil procedural law need qualitative reform, which covers a wide range of conceptual ideas, provisions and trends, which, in turn, reflect and consolidate the directions of development of the civil procedural branch of law. It is from this essence of the principles follows the fact that they are the basis for the whole system of rules of civil procedural law. The principles of civil procedural law are a concentrated expression of the essence of the civil procedural branch of law, as these principles operate in the system of norms of this branch of law.

As already mentioned, the principles find their legal expression in the legislation of Ukraine, in particular, the system of principles of civil procedural law follows precisely from the content of the Civil Procedure Code of Ukraine (hereinafter – CPC). Part 1 of Art. 2 GIC of Ukraine emphasizes the fact that the task of civil proceedings is a fair, impartial and timely consideration and resolution of civil cases in order to effectively protect violated, unrecognized or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, state interests [1]. Based on this provision, it is safe to say that certain principles of civil proceedings are a full guarantee of the integrity and systemic nature of the proceedings, as well as ensuring the protection of rights, freedoms or interests. In particular, it is important to understand that the construction of the judiciary should take into account the availability and simplicity of protection of violated, unrecognized or disputed civil rights, freedoms or interests, because unreasonable complication of judicial protection leads to violation of civil procedural law.

Based on the provisions of Chapter I of the CPC of Ukraine, we can note a list of basic principles of civil procedural law:

- the principle of judicial protection;
- the principle of publicity and openness of court proceedings;
- the principle of adversarial proceedings of the parties to civil proceedings;
- the principle of administration of justice on the basis of respect for honor and dignity, equality before the law and the courts;
- the principle of ensuring the right to legal aid;
- principle of dispositiveness [1].

The system of principles of civil procedural law needs significant reforms and improvements that would affect the effectiveness of civil proceedings on the basis of efficiency and accessibility of the mechanism of protection of rights, freedoms and interests of man and citizen in today's conditions.

Taking into account the state of development of law, state and society, the principles of civil procedural law should be aimed at the development of law, state and society; strengthening the effectiveness and efficiency of the mechanism of protection of human and civil rights, freedoms and interests, etc.

The problems that hinder the proper implementation of the principles of civil procedural law as noted by A.I. Drishlyuk. becomes the lack of a high level of legal awareness and legal awareness of citizens of Ukraine, which may result in violation of the adversarial principle due to unequal level of ownership [2, p. 18], violation of procedural obligations due to lack of awareness of their existence by the party, a consequence of low level of legal awareness result in inadequate qualifications of trained law enforcers, which causes a lack of proper legal aid and significantly limits the constitutional principle to the right to receive qualified legal aid.

Restrictions on the implementation of civil procedural principles in the judiciary and socio-economic factors, the main obstacle to access to justice given the economic level and average earnings of Ukrainian citizens is the payment of court fees, in particular the question of real reform of the approach to such an obligation to pay court services, because as noted due to financial difficulties, not every person can afford to pay in addition to the trial also the services of a representative, possibly the services of an expert or specialist, etc.

Due to a significant violation of the principle of reasonableness of procedural terms, the value of the proceedings increases.

So, the systemic principles of civil procedural law and the need for a systematic approach to their reform are confirmed. After all, even the established adequate legal restriction in justice, in order to deter from unjustified protection procedures, given the economic condition of society, in fact significantly restricts access to justice. And due to the low level of legal awareness and inaccessibility of justice, there is a lack of effective judicial protection as such, and which not only violates access to justice, but also encroaches on the rule of law and the priority of human rights in general.

As outlined above, the principles of civil procedural law may change under the influence of changes in public relations in the state, and this implies the obligation of the state to create legal grounds for effective protection of rights, freedoms and interests of any person in civil proceedings and providing access to it.

The state's neglect of its own society and the lack of mutual communication for effective communication for cooperation creates, in addition to disrespect for the state and its bodies, the most important thing is a lack of respect for the law and faith in the right to be protected by the state.

Addressing the lack of trust in the state, the difficulty of access to justice, and the return of law to Ukrainian society is the main problem in implementing the principles of civil procedural law today, because until the practical shortcomings are eliminated, legislative expression and scientific interpretation of these provisions will remain unrealized and neglected.

Conclusions. Based on all the above, we can conclude that the essence of the principles of civil procedural law is that the principles are a system of guiding ideas, provisions and concepts that reflect the essence of civil procedural law as a branch of law, due to the development of law, state and society.

Scientific and legal analysis of this issue gives us to understand that the study of the system of principles of civil procedural law is an indispensable process in modern conditions and requires considerable and constant attention. This activity must be substantively and conceptually consistent with the general rules, ideas and morals.

The study of the principles of civil procedural law is a necessary process and requires constant attention. At the same time, this activity must be conceptually, substantively and terminologically consistent with general legal ideas, conclusions and legal forecasts, as well as morality.

The main problem that necessitates a detailed study and reform of the system of principles of civil procedure law is the lack of dialogue between Ukrainian society and the state, and given that the main essence of legal principles is to reflect public approaches to legal issues in the state, there is a contradiction social norms and processes and actions of the state and its bodies.

Finding the right means of communication, raising the level of legal awareness of those to whom the state directs its influence and whose rights should be exercised, as well as ensuring access to protection of these rights in case of violation are

the main task of the state, court and all persons with appropriate legal qualifications. for a rapid process of state reform.

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Афанасьєв Д. В., Ланкін С. В., Маріц Д. О. Науково-правовий аспект принципів цивільного процесуального права

У сучасному суспільстві існує потреба вивчити та переглянути деякі погляди на правові та наукові категорії. Це питання є дуже актуальним у контексті побудови демократичної, правової та соціальної України, що вимагає ретельних теоретичних розрахунків та аналізу юридичної науки в Україні та її подальшого розвитку на кращій методологічній основі.

Стаття присвячена дослідженню принципів цивільного процесуального права та різноманітності підходів до їх класифікації. Дослідження також охоплює розуміння та кваліфікацію принципів цивільного процесуального права. Крім того, у статті розглядаються основні принципи цивільного процесуального права та їхній вплив на здійснення правосуддя в Україні. Зокрема, автори зазначають, що вдосконалення системи принципів цивільного процесуального права за сучасних умов є основою побудови ефективної моделі демократичної та правової держави. Це питання особливо актуальне за умов нестабільності у країні у зв'язку із пандемією COVID-19 та іншими проблемами, які можуть призвести до порушень прав і свобод людини, в т. ч. громадян України. Розглядається необхідність оптимізації, якісного й ефективного реформування принципів цивільного процесуального права.

Процедура формування принципів цивільного процесуального права, що зрозуміло, базується на загальних принципах правової системи держави, але проблемне питання принципів процесуального права все ще залишається актуальним і суперечливим. Враховуючи актуальність проблеми, не дивно, що питання принципів цивільного процесуального права все ще викликає інтерес у науковців-практиків, які займалися або займаються їх дослідженням. Це питання та деякі інші визначають тему статті.

Ключові слова: принципи цивільного процесуального права, цивільний процес, тенденції розвитку принципів цивільного процесуального права.